

# IC 35-48-4-14.7

## **Pharmacy or NPLEEx retailer; sale of ephedrine or pseudoephedrine; maximum purchase amounts; record keeping and electronic transmission of sales to NPLEEx; suspicious orders and thefts; liability**

Sec. 14.7. (a) This section does not apply to the following:

- (1) Ephedrine or pseudoephedrine dispensed pursuant to a prescription.
- (2) The sale of a drug containing ephedrine or pseudoephedrine to a licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, or an agent of any of these persons if the sale occurs in the regular course of lawful business activities. However, a retail distributor, wholesaler, or manufacturer is required to report a suspicious order to the state police department in accordance with subsection (g).
- (3) The sale of a drug containing ephedrine or pseudoephedrine by a person who does not sell exclusively to walk-in customers for the personal use of the walk-in customers. However, if the person described in this subdivision is a retail distributor, wholesaler, or manufacturer, the person is required to report a suspicious order to the state police department in accordance with subsection (g).

(b) The following definitions apply throughout this section:

- (1) "Constant video monitoring" means the surveillance by an automated camera that:
  - (A) records at least one (1) photograph or digital image every ten (10) seconds;
  - (B) retains a photograph or digital image for at least seventy-two (72) hours;
  - (C) has sufficient resolution and magnification to permit the identification of a person in the area under surveillance; and
  - (D) stores a recorded photograph or digital image at a location that is immediately accessible to a law enforcement officer.
- (2) "Convenience package" means a package that contains a drug having as an active ingredient not more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both.
- (3) "Ephedrine" means pure or adulterated ephedrine.
- (4) "Pharmacy or NPLEEx retailer" means:
  - (A) a pharmacy, as defined in IC 25-26-13-2;
  - (B) a retailer containing a pharmacy, as defined in IC 25-26-13-2; or
  - (C) a retailer that electronically submits the required information to the National Precursor Log Exchange (NPLEEx) administered by the National Association of Drug Diversion Investigators (NADDI).
- (5) "Pseudoephedrine" means pure or adulterated pseudoephedrine.
- (6) "Retailer" means a grocery store, general merchandise store, or other similar establishment. The term does not include a pharmacy or NPLEEx retailer.
- (7) "Suspicious order" means a sale or transfer of a drug containing ephedrine or pseudoephedrine if the sale or transfer:
  - (A) is a sale or transfer that the retail distributor, wholesaler, or manufacturer is required to report to the United States Drug Enforcement Administration;
  - (B) appears suspicious to the retail distributor, wholesaler, or manufacturer in light of the recommendations contained in Appendix A of the report to the United States attorney general by the suspicious orders task force under the federal Comprehensive Methamphetamine Control Act of 1996; or
  - (C) is for cash or a money order in a total amount of at least two hundred dollars (\$200).
- (8) "Unusual theft" means the theft or unexplained disappearance from a particular pharmacy or NPLEEx retailer of drugs containing ten (10) grams or more of ephedrine, pseudoephedrine, or both in a twenty-four (24) hour period.

(c) A drug containing ephedrine or pseudoephedrine may be sold only by a pharmacy or NPLEEx retailer. Except as provided in subsection (f), a retailer may not sell a drug containing ephedrine or pseudoephedrine.

(d) A pharmacy or NPLEEx retailer may sell a drug that contains the active ingredient of ephedrine, pseudoephedrine, or both only if the pharmacy or NPLEEx retailer complies with the following conditions:

- (1) The pharmacy or NPLEEx retailer does not sell the drug to a person less than eighteen (18) years of age.
- (2) The pharmacy or NPLEEx retailer does not sell drugs containing more than:
  - (A) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, to one (1) individual on one (1) day;
  - (B) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a thirty (30) day period; or
  - (C) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, to one (1) individual in a three hundred sixty-five (365) days period.
- (3) The pharmacy or NPLEEx retailer requires:
  - (A) the purchaser to produce a valid government issued photo identification card showing the date of birth of the person;
  - (B) the purchaser to sign a written or electronic log attesting to the validity of the information; and

(C) the clerk who is conducting the transaction to initial or electronically record the clerk's identification on the log. Records from the completion of a log must be retained for at least two (2) years. A law enforcement officer has the right to inspect and copy a log or the records from the completion of a log in accordance with state and federal law. A pharmacy or NPLEEx retailer may not sell or release a log or the records from the completion of a log for a commercial purpose. The Indiana criminal justice institute may obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. A pharmacy or NPLEEx retailer that in good faith releases information maintained under this subsection is immune from civil liability unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

(4) The pharmacy or NPLEEx retailer maintains a record of information for each sale of a nonprescription product containing pseudoephedrine or ephedrine. Required information includes:

- (A) the name and address of each purchaser;
- (B) the type of identification presented;
- (C) the governmental entity that issued the identification;
- (D) the identification number; and
- (E) the ephedrine or pseudoephedrine product purchased, including the number of grams the product contains and the date and time of the transaction.

(5) Beginning January 1, 2012, a pharmacy or NPLEEx retailer shall, except as provided in subdivision (6), before completing a sale of an over-the-counter product containing pseudoephedrine or ephedrine, electronically submit the required information to the National Precursor Log Exchange (NPLEEx) administered by the National Association of Drug Diversion Investigators (NADDI), if the NPLEEx system is available to pharmacies or NPLEEx retailers in the state without a charge for accessing the system. The pharmacy or NPLEEx retailer may not complete the sale if the system generates a stop sale alert.

(6) If a pharmacy or NPLEEx retailer selling an over-the-counter product containing ephedrine or pseudoephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or NPLEEx retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until the pharmacy or NPLEEx retailer is able to comply with the electronic sales tracking requirement.

(7) The pharmacy or NPLEEx retailer stores the drug behind a counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee.

(e) A person may not purchase drugs containing more than:

- (1) three and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both, on one (1) day;
- (2) seven and two-tenths (7.2) grams of ephedrine or pseudoephedrine, or both, in a thirty (30) day period;

or

(3) sixty-one and two-tenths (61.2) grams of ephedrine or pseudoephedrine, or both, in a three hundred sixty-five (365) day period. These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.

(f) This subsection only applies to convenience packages. A retailer may sell convenience packages under this section without complying with the conditions listed in subsection (d):

- (1) after June 30, 2013; and

(2) before January 1, 2014. A retailer may not sell drugs containing more than sixty (60) milligrams of ephedrine or pseudoephedrine, or both in any one (1) transaction. A retailer who sells convenience packages must secure the convenience packages behind the counter in an area inaccessible to a customer or in a locked display case that makes the drug unavailable to a customer without the assistance of an employee. A retailer may not sell a drug containing ephedrine or pseudoephedrine after December 31, 2013.

(g) A retail distributor, wholesaler, or manufacturer shall report a suspicious order to the state police department in writing.

(h) Not later than three (3) days after the discovery of an unusual theft at a particular retail store, the pharmacy or NPLEEx retailer shall report the unusual theft to the state police department in writing. If three (3) unusual thefts occur in a thirty (30) day period at a particular pharmacy or NPLEEx retailer, the pharmacy or NPLEEx retailer shall, for at least one hundred eighty (180) days after the date of the last unusual theft, locate all drugs containing Ephedrine or pseudoephedrine at that particular pharmacy or NPLEEx retailer behind a counter in an area Inaccessible to a customer or in a locked display case that makes the drug unavailable to customers without the assistance of an employee.

(i) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance after February 1, 2005, that is more stringent than this section.

(j) A person who knowingly or intentionally violates this section commits a Class C misdemeanor. However, the offense is a Class A misdemeanor if the person has a prior unrelated conviction under this section.

(k) A pharmacy or NPLEx retailer that uses the electronic sales tracking system in accordance with this section is immune from civil liability for any act or omission committed in carrying out the duties required by this section, unless the act or omission was due to negligence, recklessness, or deliberate or wanton misconduct. A pharmacy or NPLEx retailer is immune from liability to a third party unless the pharmacy or NPLEx retailer has violated a provision of this section and the third party brings an action based on the pharmacy's or NPLEx retailer's violation of this section.

(l) The following requirements apply to the NPLEx:

(1) Information contained in the NPLEx may be shared only with law enforcement officials.

(2) A law enforcement official may access Indiana transaction information maintained in the NPLEx for investigative purposes.

(3) NADDI may not modify sales transaction data that is shared with law enforcement officials.

(4) At least one (1) time per week, NADDI shall forward Indiana data contained in the NPLEx, including data concerning a transaction that could not be completed due to the issuance of a stop sale alert, to the state police department.

*As added by P.L.192-2005, SEC.9. Amended by P.L.151-2006, SEC.27; P.L.186-2007, SEC.9; P.L.97-2010, SEC.1; P.L.221-2011, SEC.1; P.L.193-2013, SEC.8.*